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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,)	Case No. 23-CR-00268 JSW
)	
Plaintiff,)	UNITED STATES' TRIAL BRIEF
)	
v.)	Pretrial Conference: March 24, 2025
)	Trial Date: April 28, 2025
(2) DEVON CHRISTOPHER WENGER,)	Court: Hon. Jeffrey S. White
)	
Defendant.)	
)	

The United States respectfully submits this brief describing issues that may arise during trial.

I. Background

The Indictment alleges that defendant Devon Christopher Wenger conspired with co-defendant Daniel Harris and others to distribute anabolic steroids, which are Schedule III controlled substances, in violation of 21 U.S.C. § 841, and altered, destroyed, or falsified records, in violation of 18 U.S.C. § 1519. Dkt. 1.

1 The government anticipates that the evidence at trial will show that Wenger conspired with co-
2 defendant (and former Antioch Police Department officer) Daniel Harris and others to distribute
3 anabolic steroids. The government expects Harris to testify at trial that that he purchased anabolic
4 steroids for his own use, as well as to distribute to other law enforcement officers, from a source in
5 Florida known to Harris as an individual with the initials J.M. Dkt. 113 (Harris Plea Agreement) at 4.
6 Harris will testify that he sold anabolic steroids to Wenger and others. Dkt. 113 at 4.

7 The evidence will also show that Harris worked with his source to ship packages of steroids to
8 many customers. *See, e.g.*, Dkt. 145-2 at 3 (“So this is a small one for my client and hoping you’ll be
9 able to get it out pretty quick.”), *id.* (“For order #2 just get me a price and a time frame.”). Wenger was
10 aware that Harris sold steroids to others. Indeed, after purchasing steroids from Harris, Wenger noted to
11 Harris that his “dad might want some too, he’s trying to cut fat and gain muscle.” Dkt. 145-4 at 2.

12 Wenger also connected Harris with his friend with the initials B.M., and Harris agreed to supply
13 B.M. with anabolic steroids through Wenger. Dkt. 113 at 4. To that end, on March 2, 2022, at 12:22 pm,
14 Wenger texted Harris and asked if he could “come by Monday or Sunday to pick up [B.M.’s] stuff?”
15 Dkt. 145-5 at 3. A minute later, he wrote to B.M.: “I’m leaving to Long Beach on Tuesday, so I’ll pick
16 your stuff up from Dan on Monday or one of those days before I leave!” Dkt. 145-6 at 3. B.M.
17 responded: “Fuck yeah! LET’S GET FUCKING JACKEEEEEEEEEEEEED.” Dkt. 145-6 at 4. On March 9,
18 2022, Wenger contacted Harris again about B.M.’s order. Dkt. 113 at 5 (“Calling to see if I can pick up
19 [B.M.’s] stuff.”). Harris provided Wenger with tracking information showing that the package had been
20 delayed. Dkt. 113 at 5. Wenger responded with “Fuck! No worries. I’ll give him my new one and take
21 one of his, does that work?” Dkt. 113 at 5.

22 The evidence at trial will also show that the specific package about which Harris and Wenger
23 corresponded was seized and searched by law enforcement agents. *United States v. Amiri et al.*, 23-CR-
24 269, Dkt. 180 at 4. The package contained anabolic steroids, including Testosterone Enanthate,
25 Testosterone Propionate, and Trenbolone Acetate, among other substances.

26 The evidence at trial will also show that, on March 23, 2022, law enforcement agents seized
27 Wenger’s phone. However, prior to the seizure of the phone, certain content—including full message
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1 threads with Harris and B.M., as well as call log entries showing contacts with Harris and B.M.—had
2 been deleted from Wenger’s phone. *See* Dkt. 184-4 at 2. In addition, although review showed that
3 Wenger had received messages on Signal (an encrypted messaging application) on March 23, 2022,
4 forensic review was not able to recover any actual Signal messages from this time period. *Id.*

5 II. Discussion

6 A. Conspiracy to Distribute Controlled Substances

7 In order to prove that Wenger conspired to distribute controlled substances, the United States is
8 required to prove that “(1) there existed an agreement between two or more persons to possess with
9 intent to distribute or to distribute the controlled substance; and (2) the defendant joined the agreement
10 knowing of its purpose and intending to help accomplish that purpose.” *United States v. Jaimez*, 45 F.4th
11 1118, 1123 (9th Cir. 2022) (citations omitted and alterations adopted). “Once the existence of the
12 conspiracy is shown, evidence establishing beyond a reasonable doubt a knowing connection of the
13 defendant with the conspiracy, even though the connection is slight, is sufficient to convict him of
14 knowing participation in the conspiracy.” *United States v. Collazo*, 984 F.3d 1308, 1319 (9th Cir. 2021)
15 (citation omitted).

16 Although Wenger may argue that he had a mere buyer-seller relationship with Harris, the
17 evidence at trial will show instead his knowing participation in the conspiracy: Wenger was aware that
18 Harris sold steroids to others; brought up the possibility that Harris could sell steroids to both Wenger’s
19 father and B.M.; connected B.M. to Harris; and once Harris agreed to sell steroids to B.M., tried to
20 facilitate the delivery of steroids to B.M. This is more than sufficient to show that Wenger “had the
21 intent to effectuate the object of the conspiracy.” *United States v. Collazo*, 984 F.3d 1308, 1319 (9th Cir.
22 2021).

23 In addition, Wenger may also argue that he did not know that anabolic steroids were controlled
24 substances under federal law. But “[i]gnorance of the law is no defense, and so the government need not
25 show that the defendant knew anything about the law[.]” *United States v. Hussein*, 351 F.3d 9, 17 (1st
26 Cir. 2003); *see also United States v. Cain*, 130 F.3d 381, 384 (9th Cir. 1997) (“Cain did not have to
27 know that possession of a controlled substance was illegal.”). Therefore, it is sufficient that Wenger
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1 knew what he agreed to distribute—specifically anabolic steroids to help “cut fat and gain muscle”—
2 regardless of whether he subjectively believed that such conduct was legal.

3 *B. Alteration, Destruction, or Falsification of Records (Obstruction of Justice)*

4 In order to prove a violation of 18 U.S.C. § 1519, the United States must prove Wenger
5 (1) knowingly altered, destroyed, concealed, or falsified a record, document, or tangible object; (2) acted
6 with the intent to impede, obstruct, or influence an actual or contemplated investigation; and (3) the
7 investigation concerned a matter within the jurisdiction of any agency or department of the United
8 States. *United States v. Gonzalez*, 906 F.3d 784, 793 (9th Cir. 2018). Although Wenger may argue
9 otherwise, it is not necessary that the government prove that Wenger specifically contemplated a federal
10 investigation at the time he deleted the messages described above. *Id.* at 795; *United States v. Moyer*,
11 674 F.3d 192, 206 (3d Cir. 2012) (“Thus, if the statute does not require the existence of a federal
12 investigation before criminal liability may attach, it certainly does not require the government to identify
13 a specific federal statute that is the focus of the investigation.”); *United States v. Gray*, 642 F.3d 371,
14 379 (2d Cir. 2011) (“Section 1519 does not require the existence or likelihood of a federal
15 investigation.” (alteration adopted)).

16 Instead, “it is enough for the government to prove that the defendant intended to obstruct the
17 investigation of any matter as long as that matter falls within the jurisdiction of a federal department or
18 agency.” *Gonzalez*, 906 F.3d at 795. Beyond that, ignorance of the law is once again not a defense:
19 “[t]he defendant need not know that the matter in question falls within the jurisdiction of a federal
20 department or agency.” *Id.* Here, the evidence will show that Wenger selectively deleted messages
21 relevant to his purchase and distribution of anabolic steroids, and that the distribution of anabolic

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steroids—Schedule III controlled substances—falls within the jurisdiction of multiple federal agencies.

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Respectfully submitted,

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/s/
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